

CHILDREN AND FAMILIES

DIVISION OF YOUTH AND FAMILY SERVICES

Legal Guardianship

Readoption with Amendments: N.J.A.C. 10:132A

Adopted New Rule: N.J.A.C. 10:132A-3.6

Proposed: June 16, 2008 at 40 N.J.R. 3567(a).

Adopted: October 28, 2008 by Kimberly S. Ricketts, Commissioner,  
Department of Children and Families.

Filed: October 31, 2008 as R.2008 d.364, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 3B:12A-1, 3B:12A-6f, 30:4C-4(h), 30:4C-12.1, 30:4C-84 through 88 and N.J.S.A. 44:10-44 through 44:10-54.

Effective Date: October 31, 2008, Readoption;  
December 1, 2008, Amendments and New Rule.

Expiration Date: October 31, 2013.

Summary of Public Comments and Agency Responses:

The Division received comments from Janet Farrand, Foster and Adoptive Family Services, Joseph Suozzo, Esquire, Office of the Child Advocate, Lorraine M. Augostini, Office of the Public Defender, Office of Law Guardian, and Mary M. McManus-Smith, Legal Services of New Jersey.

N.J.A.C. 10:132A-1.3

1. COMMENT: The Office of the Child Advocate (OCA) appreciates the addition of civil union and domestic partnership to the definition of relative. OCA assumes that marriage also refers to same sex couples who have been married in those jurisdictions that have full marriage equality.

RESPONSE: Thank you for your support of these amendments. Pursuant to Attorney General Formal Opinion No. 3-2007, government-sanctioned, same-sex relationships established in other jurisdictions that approximate a New Jersey domestic partnership or a civil union are valid in New Jersey and provide all of the rights and obligations of a New Jersey domestic partnership or a civil union respectively. Atty.Gen. FO 2007, No. 3.

N.J.A.C. 10:132A-1.5(b)2

2. COMMENT: The Department of Children and Families (DCF) is not authorized by any statute to maintain ongoing monitoring of the household composition of the kinship legal guardian. The Division of

Youth and Family Services (DYFS) does not review the composition of adoptive parents and may not monitor the composition of kinship legal guardianship (KLG) families.

RESPONSE: The Division has undertaken this subsidy program to obtain permanency for abused and neglected children, and as such, the Division appropriately imposes conditions on eligibility for this program. To clarify its position, the Division will change N.J.A.C. 10:132A-1.6 to add paragraph (b)6, which provides that “The relative’s home meets the program standards articulated in N.J.A.C. 10:132A-1.7, for as long as the subsidy is paid.”

N.J.A.C. 10:132A-1.6(a)

3. COMMENT: The amendments limit situations in which DYFS should discuss kinship legal guardianship with the caregiver. Delete the proposed amendments and return to the current language or add further amendments to clarify that DYFS is not limiting situations in which kinship legal guardianship should be discussed.

Withholding information from the caregiver until DYFS has a permanent plan is contrary to all public policy supporting open government and to N.J.S.A. 30:4C-90.

N.J.S.A. 30:4C-91 requires the Division to provide information to individuals who could potentially become kinship legal guardians. The proposed language eliminates the opportunity for caregivers to make informed decisions about KLG or adoption.

DYFS is obligated to inform caregivers about KLG subsidy even if DYFS has not decided on a permanent plan. Delete the proposed amendment and add a new timeframe, “as early as possible prior to or immediately following, the initial placement of a child in the kin’s home. The same information shall be provided as soon as permanency options are being considered.”

RESPONSE: The Division agrees kinship legal guardianship should be discussed with caregivers during all discussions about permanency planning when KLG is an appropriate permanency plan. As this regulation pertains only to discussions of the subsidy, the Division believes that this point can be clarified by amending N.J.A.C. 10:132A-1.6(a) to say “When the Division considers kinship legal guardianship as a permanent plan for the child, the Division representative advises a relative interested in the DYFS Legal Guardianship Subsidy Program of the requirements for eligibility and the circumstances that require termination of the program.”

4. COMMENT: Only the court can decide who has legal standing to seek a certain form of relief. This can not be dictated by regulation. The court can take the suggestion by a relevant participant in the child welfare system. Add amendments “for the purpose of submitting a permanent plan to the court” and “KLG is the most appropriate permanent plan.”

The proposed language that the Division has the sole responsibility for determining whether kinship legal guardianship is appropriate

contravenes N.J.S.A. 30:4C-87 and 3B:12A-6e(1), which grants standing to both DYFS and the court, as well as allowing the parent to request that the court consider kinship legal guardianship.

RESPONSE: The subject of these rules is the DYFS Legal Guardianship Subsidy Program eligibility requirements and program standards. The Division is not addressing the issue of the decision to award kinship legal guardianship. The Division will not change the rule as suggested.

5. COMMENT: The caregiver's preference for kinship legal guardianship over adoption is critical, if not determinative. See New Jersey Division of Youth and Family Services v. D.H., 398 N.J. Super. 333 (App. Div. 2008) and New Jersey Division of Youth and Family Services v. P.P., 180 N.J. 494 (2004).

The proposed provision also appears to be unworkable since the Division should not make a permanency plan of KLG without the consent of the caregiver who is the proposed guardian. Since DYFS can not give the caregiver the information, the caregiver cannot give informed consent about kinship legal guardianship.

RESPONSE: As indicated in the Division's response to Comment 3, the Division agrees that kinship legal guardianship should be discussed with the caregiver during all discussions about permanency planning when the Division considers kinship legal guardianship as an appropriate permanent plan.

N.J.A.C. 10:132A-1.6(b)2, 3, 4, and 5

6. COMMENT: It is unnecessary to consider whether factors required to establish KLG apply since they have already been found by a court. Proposed N.J.A.C. 10:132A-1.6(b)2, 3 and 4 are redundant, and potentially misleading. Eliminate them.

RESPONSE: N.J.A.C. 10:132A-1.6(a) states that "...the Division representative advises a relative interested in the DYFS Legal Guardianship Subsidy Program of the requirements for eligibility..." Participation in the DYFS Legal Guardianship Subsidy Program pursuant to these rules is a separate and distinct process from the court process to award KLG. In this discussion, it is necessary for the Division representative to explain all the things that have to happen for a child to be accepted into the Program. These factors distinguish the DYFS Legal Guardianship Subsidy Program from an award of KLG under the Navigator Program, in accordance with N.J.A.C. 10:90-19, because the standards for the two subsidies are different. The Division is adopting N.J.A.C. 10:132A-1.6(b)2 through 5 as proposed.

N.J.A.C. 10:132A-1.6(b)4

7. COMMENT: An alternate meaning of N.J.A.C. 10:132A-1.6(b)4 is that DYFS would pay KLG subsidy only where DYFS itself determined that adoption is neither likely nor feasible, regardless of the judicial determination that will have been made for a kinship legal guardian to have been appointed. As this is not the likely intent of the

subsection, eliminating the subsection would alleviate the ambiguity and duplication with the court's responsibilities.

RESPONSE: The Division points out that there is a distinction between the judicial determination to award KLG and the Division's decision to award the KLG subsidy through the DYFS Legal Guardianship Subsidy Program. Following the award of KLG, the Division will pay the KLG subsidy when the eligibility requirements are met and the program standards are satisfied.

N.J.A.C. 10:132A-1.6(b)4

8. COMMENT: Expand the section to include determinations made by the court or DYFS that a child cannot be returned home and that adoption is neither feasible nor likely.

RESPONSE: See the Division's response to Comment 2.

N.J.A.C. 10:132A-1.6(b)5 and 6

9. COMMENT: The Office of the Public Defender strongly supports the proposed amendments regarding living in New Jersey. The OCA agrees with the elimination of the requirement that the child and relative live in New Jersey.

RESPONSE: The Division thanks the Office of the Public Defender and the Office of the Child Advocate for their support.

N.J.A.C. 10:132A-1.7(a)

10. COMMENT: Eliminate all requirements from 1.7(a) that are also statutory requirements.

RESPONSE: The Division believes that including all program standards in the rules is a convenience to the reader. Therefore, the Division is adopting this section as proposed.

N.J.A.C. 10:132A-1.7(a)4, 5, and 6

11. COMMENT: These monitoring requirements contradict N.J.S.A. 3B:12A-4 and 6(e)1, N.J.S.A. 30:4C-90(b) and the Constitutional rights of a family. This violates the due process and equal protection rights of families formed through kinship legal guardianship. See Santosky v. Kramer, 455 U.S. 745, 787, 102 S.Ct. 1388, 1412 (1982) and New Jersey Division of Youth and Family Services v. A.W., 103 N.J. 591 (1986).

RESPONSE: See the Division's response to Comment 2. Moreover, pursuant to N.J.S.A. 3B:12A-6a(12), the existence of a criminal conviction specified in N.J.S.A. 30:4C-26.8 by the caregiver or any adult residing in the caregiver's home must be evaluated to determine if the caregiver is suitable to become a kinship legal guardian.

N.J.A.C. 10:132A-1.7(a)4



12. COMMENT: OCA supports the amendment to allow for the realities of teenage parenthood and parenthood of individuals with developmental disabilities.

RESPONSE: The Division thanks the Office of the Child Advocate for its support.

13. COMMENT: Add that the prohibition on the parent living with the child and guardian is only when the parent lives with the guardian permanently. Add that the parent may live with the guardian when a court order allows it based on the best interests of the child.

RESPONSE: The Division believes that the wording of the new N.J.A.C. 10:132A-1.7(a)4 can accommodate exceptions, as it allows for circumstances including, but not limited to, the two exceptions stated in the rule.

N.J.A.C. 10:132A-1.7(a)6

14. COMMENT: It is impossible for the caregiver to provide information of which he or she is unaware. Amend the section to add “of which the relative has knowledge.”

RESPONSE: The Division expects that caregivers are generally aware of the criminal convictions of those with whom they choose to reside. The Division does not believe that it can compromise the safety of any child placed with a relative by reducing the standard related to

criminal convictions of juveniles. The Division is adopting the paragraph as proposed.

N.J.A.C. 10:132A-1.7(a)12

15. COMMENT: OCA supports this addition.

It is unclear whether the caregiver must have adequate income without the kinship legal guardianship subsidy to support the family either including or not including the child covered by the KLG subsidy.

Will the determination of adequate income be based on the relative without counting the children in placement and the maintenance payments for their care?

The standard is too high, much more stringent than the one for adoption subsidy. This creates the opposite of a needs-based selection process. Financial supports will be provided only if they are not needed. There are no financial criteria for the judicial grant of KLG. This leaves the kinship legal guardianship children most in need of financial assistance without it. It is so contrary to the needs-based Work First New Jersey Kinship Care Subsidy Program as to create equal protection issue for KLG established within and without DYFS litigation.

RESPONSE: The Division appreciates the Office of Child Advocate's support of this amendment.

The Division has changed the language of this paragraph to clarify that the Division's standard is that the relative caregiver has adequate income to support himself, herself and his or her family, excluding the

child eligible for the DYFS Legal Guardianship Program, as the Program provides financial support for the eligible child.

N.J.A.C. 10:132A-1.8(b)

16. COMMENT: The amendments are, in part, an improvement to the current language. Remove the amendments to N.J.A.C. 10:132A-1.8(b) regarding the child's case goal being kinship legal guardianship. Remove "immediate" from N.J.A.C. 10:132A-1.8(b)1.

RESPONSE: The Division agrees to remove the adjective "immediate" and replace it with "timely." The Division believes that this better captures the Division's mandate for prompt case planning.

17. COMMENT: The Administrative Procedures Act requires that an agency provide notice of administrative determinations in contested cases. There is no basis for DYFS to chose or refuse to provide notice. There is a balancing test to the imposition of due process rights per Goldberg v. Kelly, 397 U.S. 254, 263-271 (1970), Mathews v. Eldridge, 424 U.S. 319, 335 (1976), and Regional Rail Reorganization Act Cases, 419 U.S. 102, 156 (1974). A claim to a pre-deprivation hearing as a matter of constitutional rights rests on the proposition that full relief cannot be had at a post-deprivation hearing. Since the Kinship Navigator program provides notice and due process hearing rights for KLG subsidies, and the DYFS KLG program does not, equal protection concerns are raised. This regulation would undermine the right of the caregiver to notice of DYFS' determination on his application for subsidy.

RESPONSE: N.J.A.C. 10:132A-1.8(b) establishes the requirement for the Division to give notice to a relative, in writing, when the relative is not eligible to participate in the DYFS Legal Guardianship Subsidy Program. N.J.A.C. 10:132A-1.8 (b)2 and 3 provide the right for dispute resolution. The parameters and standards for dispute resolution are set forth at N.J.A.C. 10:120A; the dispositional review process set forth within satisfies the relative's due process interest pursuant to the Mathews v. Eldridge factors.

N.J.A.C. 10:132A-1.9(a)1

18. COMMENT: Add "permanently" so that the prohibition of the parent living in the home is limited to "permanently." Add a second exception to the prohibition: that a valid court order based on the best interests of the child is in effect.

RESPONSE: The Division does not choose to expand the stated exceptions to the prohibition to the child's parent living with the child in the kinship legal guardian's home in order to qualify for a subsidy through the Program. The Division believes that N.J.A.C. 10:132A-1.7(a)4 allows for the rare circumstance in which the Division determines that the child's safety can be maintained with the parent living in the home. See also, response to Comment #2.

19. COMMENT: There is no statutory authority to impose a restriction on the child's parent living with the KLG and child. N.J.S.A. 3B:4(a)(1) and 6(e)(1) and 30:4C-90(b) give a KLG virtually all rights of

a birth parent, including the right and responsibility to safeguard the child. The exceptions proposed by DYFS take an exceedingly narrow view of when a parent is not a risk to a child. Several actions or inactions of a parent that can lead to KLG should not lead to a presumption that the parent's presence in the home would place the child at risk.

RESPONSE: The purpose of the DYFS Legal Guardianship Subsidy Program is to provide a safe, permanent family for a child whose parents are unable to provide the child with a safe home. If the parent is able to parent the child, then the child should not be part of the Program. The Division has allowed an exception to be made in the rare and limited circumstances when the Division believes that the parent can live with the child and kinship legal guardian safely.

20. COMMENT: The promise of opportunity to vacate KLG can motivate positive changes in the parent. The parent's living with the child and KLG may be an appropriate step toward reunifying the family. Financial support should not rest upon the exclusion of the parent from the child's home.

RESPONSE: By the time kinship legal guardianship has been awarded by the court, reunification of the child and parent has been tried and not succeeded. The court would have already found that the parent's incapacity is of such a serious nature as to demonstrate that the parents are unable, unavailable or unwilling to perform the regular and expected functions of care and support of the child and that the parent's ability to

perform those functions is unlikely to change in the foreseeable future.  
N.J.S.A 3B:12A-6b.

N.J.A.C. 10:132A-1.10(a)6

21. COMMENT: Legal Services of New Jersey supports the elimination of New Jersey residency as an eligibility criterion for KLG subsidy.

OPD supports removing the requirement that the relative and child must live in New Jersey.

RESPONSE: The Division thanks Legal Services of New Jersey and the Office of the Public Defender for their support of this amendment.

N.J.A.C. 10:132A-1.11

22. COMMENT: Reinstate the language about the child's right to seek a dispositional review.

Reinstate the child's right to seek a dispositional review of a denial or termination. This contravenes the Child Placement Bill of Rights, N.J.S.A. 9:6B-4(i).

There is no reasonable basis to eliminate a child's right to dispute KLG subsidy determination. The child has an interest in where he or she will live, the legal relationship between the child and his or her caregiver, and financial assistance provided for his or her care. The KLG program is analogous to child support paid by one parent by another parent. The right to child support vests in the child. See L.V. v. R.S., 347 N.J. Super. 33, 41

(App. Div. 2002). Retain the child's right to dispute KLG subsidy determination.

RESPONSE: The Office of the Public Defender, Legal Services of New Jersey, and the Office of the Child Advocate correctly commented that the Division was incorrect in its assertion that a child does not have the right to dispute resolution. The Division recognizes that a relative caregiver's right to dispute resolution concerning the DYFS Legal Guardianship Subsidy Program's payments is not duplicative of the child's right. A child, otherwise entitled to a DYFS Legal Guardianship subsidy, is the intended beneficiary of that service and, therefore, should retain the right to a dispositional review, independent of the kinship caregiver, if participation in the DYFS Legal Guardianship Subsidy Program is denied or terminated.

23. COMMENT: Instead of the proposed amendment to N.J.A.C. 10:132A-1.11, add language, "A relative who is awarded KLG" to clarify the first sentence.

Restricting the rights of the caregiver to dispositional reviews only when the Division determines that KLG is the appropriate case goal and DYFS has denied the relative participation in the subsidy program unduly eliminates this right for most relative caregivers. The right to review is illusory because KLG is available only to the present long-term relative caregiver.

RESPONSE: The Division agrees that the proposed amendment is inadequate. The Division has added a statement to clarify that the court

award of kinship legal guardianship is a process separate and apart from the decision to award the subsidy through the Program.

N.J.A.C. 10:132A-3.5(d)

24. COMMENT: As part of the Division's parenting assessment, the Division shall determine if the parent's conditions now have substantially changed from the time the KLG was awarded, not from the initiation of the case.

RESPONSE: The Division agrees with the Office of the Child Advocate's comment that this is a more relevant standard of comparison. The Division has clarified the statement to read "...shall include information about whether the parent's \*[initial]\* incapacity and inability to care for and support the child have been remediated."

N.J.A.C. 10:132A-3.6(a)

25. COMMENT: The factors that DYFS considers with regard to motions to vacate a KLG order must include the wishes of the child. The family court will consider this, per the Child Placement Bill of Rights and New Jersey DYFS v. E.P., A-112-06.

RESPONSE: The child's best interest should govern pursuant to N.J.S.A. 9:6B-1 et seq. and N.J.S.A. 3B:12A-6f . A child's wishes are considered within the statutory criteria that provide that KLG may be



vacated if the court finds that KLG is no longer in the best interests of the child. The Division will not be making the change as proposed.

#### General Comments

26. COMMENT: The OPD approves many efforts to clarify the language and reconcile provisions with other chapters.

RESPONSE: The Division thanks the Office of the Public Defender for its approval of the amendments to the chapter.

#### Summary of Agency-Initiated Changes:

The Division is correcting a typographical error at N.J.A.C. 10:132A-1.9(a)1. An exception has been previously granted by the DYFS Director, not the DYES Director.

#### Federal Standards Statement

The rules readopted with amendments do not exceed requirements of Federal law.

The rules readopted with amendments assist the Division to comply with the intent of Title IV-E of the Social Security Act. 42 U.S.C. §675(5)(E)(i) requires the Division to seek permanency through adoption for children who cannot return home, unless the child is being cared for by a relative. In this regard, Title IV-E recognizes kinship legal guardianship

as an alternative permanent placement for a child in 42 U.S.C. §671(a)(15)(F).

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 10:132A.

Full text of the adopted amendments and new rule follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

CHAPTER 132A  
LEGAL GUARDIANSHIP

SUBCHAPTER 1. DYFS LEGAL GUARDIANSHIP SUBSIDY PROGRAM

10:132A-1.3 Definitions

(a) (No change.)

(b) The following words and terms shall have the following meaning in this chapter and not the meaning defined in N.J.A.C. 10:133-1.3:

...

“Relative” means any person, other than the child’s parent, who is related to the child through blood, marriage, adoption, civil union, or domestic partnership and including a stepparent, or a "family friend," as defined in N.J.A.C. 10:133-1.3.

(c) In addition, the following words and terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"DYFS Legal Guardianship Subsidy Program" or "program" means a service provided by the Division to provide financial support and permanency to certain children for whom a relative has obtained kinship legal guardianship pursuant to N.J.S.A. 3B:12A-1 et seq.

“Household member” means an adult or child who resides either full-time or part-time in the home of a relative who participates in the DYFS Legal Guardianship Subsidy Program.

...

“Placed by the Division” means a Division representative determined that a child could not remain in his or her own home, the Division had legal authority for removal of the child, and a Division representative physically located or arranged for the child to be placed in a relative’s home.

10:132A-1.5            Responsibilities of a relative participating in the DYFS Legal Guardianship Subsidy Program

(a)    (No change.)

(b)    A relative approved for the program shall:

1.     (No change.)

2.     Report to a Division representative any changes in circumstances, which may affect eligibility for the program, including a change in household composition, prior to the change if possible or immediately thereafter; and

3.     (No change.)

10:132A-1.6            Eligibility for the DYFS Legal Guardianship Subsidy Program

(a)    When the Division determines \*[that]\* kinship legal guardianship \*[is the]\* \*as a\* a permanent plan for the child, the Division representative advises a relative interested in the DYFS Legal Guardianship Subsidy Program of the requirements for eligibility and the circumstances that require termination of the program.

(b)    A child is eligible for the DYFS Legal Guardianship Subsidy Program when:

1.     A Division representative placed the child with a relative due to safety or risk of harm issues and the Division had legal authority for placement through a court order;

2. The relative is related to the child through blood, marriage, adoption, civil union, or domestic partnership or is a family friend as defined at N.J.A.C. 10:133-1.3;

3. A Division representative made reasonable efforts when required to reunify the child and the parent;

4. The Division representative determines that the child cannot be returned to his or her parent and that adoption is neither likely nor feasible; \*[and]\*

5. The relative has obtained kinship legal guardianship, pursuant to the Kinship Legal Guardianship Act, N.J.S.A. 3B:12A-5 \*[\*]\* and\*

\*6. The relative's home meets the program standards articulated in N.J.A.C. 10:132A-1.7, for as long as the subsidy is paid.\*

10:132A-1.7 Program standards

(a) The Division requires a relative interested in being approved for the program to meet the following standards in order to be approved for the DYFS Legal Guardianship Subsidy Program:

1. (No change.)

2. The relative is at least 18 years of age;

3. No household member has been responsible for an incident of sexual abuse of a child or an incident of child abuse or neglect, which caused death, serious injury or harm, or significant risk of serious injury to a child;

4. The child's parent does not reside in the relative's home, unless an exception is made by the DYFS Director or his or her designee for those rare and limited circumstances including, but not limited to, where the parent is dependent upon the

caregiver because he or she is a minor or developmentally challenged and not capable of residing independently;

5. No household member has been convicted of a crime specified in N.J.S.A. 30:4C-26.8;

6. The relative discloses any criminal convictions of each juvenile member of the household. The Division representative assesses the safety of a child placed with this relative in relation to the criminal convictions of any juvenile living with the relative;

Recodify existing 6.-10. as 7.-11. (No change in text.)

12. The relative has adequate income to support himself or herself and each household member \*, excluding each child in placement,\* without the addition of the maintenance payment from the DYFS Legal Guardianship Subsidy Program;

Recodify existing 11. and 12. as 13. and 14. (No change in text.)

10:132A-1.8 Division action

(a) (No change.)

(b) The Division representative shall advise a relative of a child whose case goal is kinship legal guardianship who is not approved to participate in the DYFS Legal Guardianship Subsidy Program, in writing, of:

1. The reason for disapproval and any acceptable \*[immediate]\* \*timely\* remedies of the reason for disapproval;

2.-3. (No change.)

10:132A-1.9 Circumstances requiring redetermination

(a) Approval of the child continuing to participate in the DYFS Legal Guardianship Subsidy Program is redetermined:

1. Annually to confirm that the relative remains legally responsible for the child and the child's support and that the child's parent does not reside in the home, unless an exception has been previously granted by the \*[DYES]\* \*DYFS\* Director or his or her designee; and

2. (No change.)

10:132A-1.10 Circumstances requiring termination

(a) The child's participation shall be terminated from the DYFS Legal Guardianship Subsidy Program when:

1.-2. (No change.)

3. The relative approved for the program no longer provides the child's support or the child no longer lives with that relative;

4. Each relative approved for the program is deceased; or

5. (No change in text.)

10:132A-1.11 Dispute resolution

\*(a)\* A relative caring for a child whose goal is kinship legal guardianship and whose participation in the DYFS Legal Guardianship Subsidy Program is denied or whose approval is terminated may request a dispositional review of the denial or termination \*. A child whose participation in the DYFS Legal Guardianship Subsidy Program is denied or whose participation in the program is terminated or a person named to act on the child's behalf in N.J.A.C. 10:120A-3.1(a)1 or 2 may request a dispositional review of the denial or termination\* in accordance with N.J.A.C. 10:120A.

\*1. The court's award of kinship legal guardianship is separate from the determination of eligibility for the DYFS Legal Guardianship Subsidy Program. Dispute resolution through these rules is not available for court actions.\*

## SUBCHAPTER 2. SERVICES PROVIDED

### 10:132A- 2.1 Types of services provided

#### (a) The DYFS Legal Guardianship Subsidy Program:

1. Provides a maintenance payment that equals the rate paid for a child in resource family care, excluding any specialized rates, for each child approved for participation in the program; and

2. (No change.)

#### (b) (No change.)

(c) The Division shall renegotiate the amount of the maintenance payment to a maximum of \$250.00 per month for up to one year when:

1. A child in the program is living in a treatment facility;

2. The plan is to return the child to the relative at the conclusion of the treatment; and

3. The relative is actively participating in the child's treatment plan.

Recodify existing (c) and (d) as (d) and (e) (No change in text.)

## SUBCHAPTER 3. DIVISION RESPONSIBILITIES UNDER THE LAW

### 10:132A-3.3 Kinship caregiver assessment done by the Division



(a) The Division shall provide the court with a kinship caregiver assessment pursuant to the Kinship Legal Guardianship Act at N.J.S.A. 30:4C-85, when a relative is seeking kinship legal guardianship for a child:

1. Who was removed from the child's home by a Division representative at least 12 months prior to the date the kinship caregiver assessment is requested;

2.-3. (No change.)

(b)-(d) (No change.)

10:132A-3.5 The Division's responsibility when the court is considering whether to vacate a kinship legal guardianship order

(a) The Division representative prepares a parenting assessment of a child's parent when the court is determining whether the kinship legal guardianship order should be vacated and the child returned to his or her parent and one of the following occurs:

1. The court requests the parenting assessment because the Division was originally involved in petitioning the court to grant kinship legal guardianship in accordance with N.J.A.C. 10:132A-3.3(a) and (b); or

2. There is prima facie evidence to support vacating the kinship legal guardianship order and the Division wants to take a position on the parent's motion to vacate the kinship legal guardianship order.

(b) The Division determines whether to take a position on the motion after evaluating the factors listed in N.J.A.C. 10:132A- 3.6.

(c) When preparing a parenting assessment, the Division representative shall review the Division's computerized records. If further information is needed, the Division representative shall review the child's and the guardian's case files. If the Division

representative finds it necessary, a Division representative may conduct a home visit or obtain an evaluation of the parent undertaken by a consultant.

(d) If the Division prepares a parenting assessment, the Division representative shall include information about whether the parent's \*[initial]\* incapacity and inability to care for and support the child have been remediated.

10:132A-3.6 Factors to consider regarding motions to vacate kinship legal guardianship orders

(a) The Division shall consider the following factors related to the child's safety when determining whether to take a position on a motion to vacate a kinship legal guardianship order:

1. The child's age;
2. The duration of the Division's involvement with the child, prior to the granting of kinship legal guardianship;
3. The total length of time the child was in out-of-home placement;
4. The length of time the child has lived with the guardian, prior to and after the granting of kinship legal guardianship;
5. When kinship legal guardianship was granted;
6. What the original harm or risk of harm to the child was;
7. The parent's present fitness to care for the child;
8. Any subsequent allegations of abuse or neglect received by the Division and their findings; and
9. What plan is proposed for the child if the guardianship is vacated.